ACSI

DOCKET FILE COPY ORIGINAL

American Communications Services, Inc.

131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701
TEL: 301.617.4200 FAX: 301.617.4279
www.acsi.net

February 5, 1998

DOCKET FILE COPY ORIGINAL

FCC MAIL ROOM
FEB - 5 1998
RECEIVED

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20054

Re: (1) Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137;
(2) Application by SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121:
(3) Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208;
(4) Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and Bell South Long Distance, Inc., for Provision of In-Region, InterLATA Services In Louisiana, CC Docket No. 97-231;
(5) Request for Expedited Letter Clarification—Inclusion of Local Calls to ISPs Within Reciprocal Compensation Agreements, CC No. 96-98;
(6) Petition for Expedited Rulemaking—Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98, RM-9101;
(7) In the Matter of Expanded Interconnection with Local Telephone Company Facilities; CC Docket No. 91-141

Dear Ms. Salas:

On Wednesday, January 21 and Thursday, January 22, members of ALTS met with Commission staff to discuss various matters involving checklist compliance by BellSouth.

At the meeting on Wednesday afternoon, I committed to provide the attached publicly filed documents. The Georgia Public Service Commission complaint relates to number portability. The Georgia brief, including the chart at page 16, relates to excessive non-recurring charges. The Georgia Commission is still considering the issue of non-recurring charges.

Sincerely,

James C. Falvey

James C. Falvey
Vice President - Regulatory Affairs

Attachments
cc: J. Goldstein
M. Newman
M. Kellogg
J. Lenahan
M. McDermott

LONG ALDRIDGE
& NORMAN
ATTORNEYS AT LAW

(404) 527-4133

October 1, 1997

James Falvey
ACSI
Suite 100
131 National Business Parkway
Annapolis Junction, MD 20701

RE: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services, Docket No. 7061-U

Dear Jim:

Enclosed please find a file-stamped copy of the Brief of American Communication Services of Columbus, Inc. in the above.

Sincerely,

William E. Rice

/rso

Enclosure

ONE PEACHTREE CENTER
303 PEACHTREE STREET • SUITE 5300 • ATLANTA, GEORGIA 30308
404 527-4000 • FACSIMILE 404 527-4198

WASHINGTON, D.C. OFFICE:
701 PENNSYLVANIA AVENUE, N.W. • SUITE 600 • WASHINGTON, D.C. 20004
202 624-1200 • FACSIMILE 202 624-1298

LONG ALDRIDGE & NORMAN

ATTORNEYS AT LAW

(404) 527-4133

October 1, 1997

RECEIVED

OCT 01 1997

EXECUTIVE SECRETARY
G.P.S.C.

VIA HAND DELIVERY

Terri M. Lyndall
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334

RE: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services, Docket No. 7061-U

Dear Ms. Lyndall:

Enclosed for filing please find an original and eight copies of the Brief of American Communication Services of Columbus, Inc. in the above matter.

A copy of the brief is also enclosed in WordPerfect format on a 3½" diskette, along with a completed "Electronic Filing Transmittal Sheet" in compliance with the Commission's voluntary electronic filing guidelines.

Sincerely,

William E. Rice

William E. Rice

WER/rso

cc: All Parties of Record

ONE PEACHTREE CENTER
303 PEACHTREE STREET • SUITE 5300 • ATLANTA, GEORGIA 30308
404 527-4000 • FACSIMILE 404 527-4198

WASHINGTON, D.C. OFFICE:
701 PENNSYLVANIA AVENUE, N.W. • SUITE 600 • WASHINGTON, D.C. 20004
202 624-1200 • FACSIMILE 202 624-1298

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

IN RE:

REVIEW OF COST STUDIES, METHODOLOGIES, AND COST-BASED RATES FOR INTERCONNECTION AND UNBUNDLING OF BELLSOUTH TELECOMMUNICATIONS SERVICES	) DOCKET NO. 7061-U

<u>BRIEF OF AMERICAN COMMUNICATIONS SERVICES OF COLUMBUS, INC.</u>

American Communication Services of Columbus, Inc. ("ACSI") respectfully submits this brief in accordance with the order of the Georgia Public Service Commission (the "Commission"), signed by the Vice-Chairman and Executive Secretary on September 22, 1997, directing parties in the above to file briefs on or before October 1, 1997.

I.

<u>PRELIMINARY</u>

The Commission opened Docket No. 7061-U to establish permanent cost-based rates for unbundled network elements pursuant to The Telecommunications and Competition Development Act of 1995, O.C.G.A., § 46-5-161 *et seq.* (the "Georgia Act"), and Sections 251 and 252(d) of the Telecommunications Act of 1996 (the "Federal Act").[1] The Commission established interim rates for certain unbundled network elements by its Order dated September 18, 1996 in Docket Nos. 6415-U and 6537-U (the "1996 Order"). That Order further directed BellSouth to file additional cost studies which would become the subject of a contested proceeding. The

---

1 Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (1996).

Commission later ratified these interim rates by incorporating them into various arbitration orders, subject to true up, pending the establishment of permanent rates in the above. The Commission's December 6, 1996 Procedural and Scheduling Order in the above directed BellSouth to file direct testimony and cost studies in the above on January 31, 1997. That filing date was later twice postponed at BellSouth's request and, on April 30, 1997, BellSouth filed its initial cost study in these proceedings. Also on that date, a joint cost study was filed by AT&T and MCI based on the Hatfield Model. BellSouth, AT&T and MCI filed various revisions to their cost studies between April 30 and the commencement of hearings on September 15, 1997. On August 29, 1997, ACSI filed rebuttal testimony in the above pursuant to the Commission's Revised Procedural and Scheduling Order issued on July 1, 1997. Also pursuant to that Order, ACSI prefiled surrebuttal testimony on September 8, 1997. Hearings were held in the above during the week of September 15, 1997.

II.

THE AVAILABILITY OF UNBUNDLED ELEMENTS IS CRITICAL TO THE DEVELOPMENT OF LOCAL COMPETITION

The express intent of the General Assembly in enacting the Georgia Act includes that "[i]t is in the public interest to establish a new regulatory model for telecommunications services in Georgia to reflect the transition to a reliance on market based competition as the best mechanism for the selection and provision of needed telecommunications services at the most efficient pricing. . . ." O.C.G.A. § 46-5-161(a)(2). The preamble to the Federal Act states that its very purpose is:

> [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

The rates set in this proceeding -- perhaps more so than any other proceeding to date --

will determine whether Georgia consumers receive the benefits of facilities-based competition. Although there are a number of possible market entry strategies proposed by the parties to this proceeding, facilities-based competition holds the greatest promise for the Georgia consumer, in the form of lower prices, higher quality service, and increased innovation.[2] Congress clearly highlighted the importance of facilities-based competition by making it a prerequisite for BOCs pursuing in-region interLATA entry.[3] Resale alone cannot break the BOCs' monopoly power over the nation's only ubiquitous network. Facilities-based competition will bring greater benefits because it will create competition for every function associated with providing local exchange service, including building more sophisticated, efficient, state-of-the-art alternative telecommunications networks.

As facilities construction develops, the incumbents will retain less and less bottleneck control over network facilities associated with providing local service. The point is not necessarily to bypass the incumbent network, but to create additional competitive options for such bypass in order to force the incumbent to offer service at competitive market based prices. Furthermore, local competition is in its infancy. As fiber-based networks combine with other evolving new technologies, the reach of competitive facilities can be extended to every customer in the State. In order to reach this advanced stage of facilities-based local competition, initial attempts of facilities-based competitors in Georgia must succeed.

The linchpin of facilities-based competition is pricing of unbundled loops (and associated

---

[2] The FCC has stated that it will examine the potential for each of these principal local entry strategies in making its Section 271 decision. *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, August 19, 1997 ("Ameritech Order"), ¶ 387.

[3] Federal Act, Section 271(c)(1)(A).

elements) at rates that will encourage competition. Unbundled loops permit competition to spread beyond the downtown networks of CLECs to a broader serving area. Without unbundled loops, CLECs cannot obtain the critical mass of customers necessary to compete in a typical market. If unbundled loop pricing is deaveraged and set at the TELRIC-based rates, as advocated by ACSI,[4] local competition promises to spread very rapidly throughout Georgia.

Another factor this Commission must consider in establishing pricing for unbundled elements is the ability of Georgia to attract competitive providers of telecommunications services. The Commission's decision in this proceeding will be a primary factor considered by CLECs in deciding whether to offer services in Georgia. CLECs examining markets nationwide will be drawn to those states that have encouraged competition by adopting TELRIC-based, deaveraged unbundled loop rates. CLECs will be much more likely to provide service in a state with a single digit deaveraged loop rate, rather than BellSouth's proposed $25.80 SL1 rate.[5]

III.

THE DEVELOPMENT OF COMPETITION IN THE LOCAL TELEPHONE MARKETS REQUIRES FORWARD-LOOKING ECONOMIC PRICING OF UNBUNDLED NETWORK ELEMENTS

A key objective of both the Georgia and Federal Acts is a market structure that allows the entry of competitive local exchange providers into the local service market to promote effective competition thereby providing consumers the benefits of competition. The pricing of unbundled network elements is one of the critical components of any open market policy.

Only when prices reflect costs will the market yield the competitively determined quantity or combination of those goods and services most valued by society at the minimum resource cost

---

4 Stipe, Tr. 2265-66.

5 BellSouth Exhibit No. 2.

to society[6]. Adherence to efficient pricing and costing principles is important in achieving the competitive outcome and requires the use of reasonable, forward-looking measures of cost, and pricing mechanisms that promote efficient choices. Only if the pricing mechanisms send efficient market signals, will consumers realize the benefits of competition. Similarly, rates would have to be deaveraged in a manner that corresponds to the underlying costs.

A. <u>The Legal Mandate for TELRIC Modeling</u>

This approach is both economically sound and satisfies the pricing standards of the Federal Act. Under the Federal Act, a determination by a state commission as to whether a rate for interconnection or a network element is just and reasonable shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) . . ., nondiscriminatory, and may include a reasonable profit."[7] A TSLRIC/TELRIC-based rate is a cost-based rate which is determined without reference to a rate-or-return or other rate-based proceeding. A reasonable profit is permitted by a mark-up over direct cost which is limited to a level determined by competitive market forces in the telecommunications industry.

The TELRIC approach is also consistent with the FCC's ruling on interconnection interpreting Section 252(d) of the Federal Act.[8] Although portions of that *First Report and Order* have been vacated by the Eighth Circuit Court of Appeals on jurisdictional grounds, the costing methodology proposed by the FCC represents the application of sound economic

---

[6] Kahn, Tr. 2377.

[7] Section 252(d)(1)(B).

[8] *See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, August 8, 1996 ("First Report and Order").

principles.[9] Further, the FCC, in denying Ameritech's Section 271 application for Michigan, clearly stated that embedded cost pricing would be non-competitive and that Section 271 cannot be met by a filing that does not include rates based on TELRIC principles.[10] The FCC further stated that, in addition to TELRIC pricing, rates must also be goegraphically deaveraged. *Id.*

In the 1996 Order, the Georgia Public Service Commission (Commission) adopted a forward-looking methodology for pricing unbundled elements. Specifically, the Commission found:

> that rates for unbundled elements should be determined pursuant to a forward-looking economic cost pricing methodology. These prices should be based on the telephone companies' Total Service Long-Run Incremental cost of a particular element, which is called Total Element Long-Run Incremental Cost (TELRIC), plus a reasonable share of forward-looking joint and common costs.[11]

The Commission further determined that rates based on embedded costs do not comply with the methodology adopted by the Commission.[12]

B. <u>The Economic Mandate for TELRIC-Based Pricing</u>

Embedded or historical costs do not send the correct price signals. Prices in a competitive market are based on *forward-looking*, market-oriented costs. To achieve a competitive market outcome, prices for network elements should be developed based on two criteria:[13]

- The first is a measure of forward-looking, direct costs. The total service long run incremental cost (TSLRIC) method when focusing on services and the total element long run incremental cost (TELRIC) method when focusing on network

9 *Iowa Utilities Bd. v. Federal Communications Comm'n*, 102 F.3d 753 (8th Cir. 1997).

10 Ameritech Order, ¶¶ 283-292.

11 1996 Order, p. 13.

12 1996 Order, p. 14.

13 Kahn, Tr. 2373.

elements are appropriate standards for achieving the desired results. TELRIC and TSLRIC are identical methodologies, but focus on different aspects of ILEC operations - network elements and services. The terms can be used interchangeably.

- The second governs the mark-up over TSLRIC/TELRIC. The mark-up should permit recovery of shared and common costs, but to avoid monopoly pricing, the recovery should be restricted to forward-looking shared and common cost and to only that portion which would be recovered in a competitive market.

These requirements eliminate any reliance on embedded, actual or historical costs in developing the rate. This applies to both the direct cost estimate and to the amount by which that cost can be marked up for common cost and profit.

Using TELRIC will result in prices for network elements reflecting forward-looking, efficiently incurred costs. As noted, it is appropriate that prices be based on forward looking costing methodologies. Efficient decisions regarding market entry, exit and expansion are based on forward-looking comparisons of expected revenues and expected costs. For correct price signals to promote efficient market activity, forward-looking costs should be used.

The appropriate cost study is *long run in nature*, *i.e.*, it is based on a time horizon long enough to allow entry or exit to occur and/or for substantial changes in capacity or technology to occur. Those costs affecting any of these decisions (entry, exit, capacity expansion or technology adoption) are forward-looking and variable. A properly structured incremental cost study should therefore include forward-looking capital costs, and the preponderance of all expenses should be viewed as variable, *i.e.*, joint and common costs should amount to a relatively small fraction of total costs.

The relevant increment of demand to estimate network element costs is the *total demand by all users,* including the incumbent. Hence, the "total service" (or total element) designation. ILECs realize economies of scale. Focusing on any volume of output smaller than the total volume realized may result in higher per unit costs than are actually realized.

The incremental cost calculation is intended to capture the added cost from producing or the cost avoided from discontinuing the service, assuming all other ILEC outputs remain unchanged. For example, the incremental cost of a port is calculated assuming no change in the volume of loops and the incremental cost of loops is calculated assuming no change in the volume of ports. Since all else is held constant, the calculations focus exclusively on the cost of the unbundled network element.

C. BellSouth's Embedded Cost Proposal Must be Rejected as Not Complying with the Economic and Legal Mandates for TELRIC-Based Pricing

The prices proposed by BellSouth cannot be generally described as cost based, as the cost estimates provided in this proceeding do not serve as the basis for all the rates proposed. While some of the proposed rates are based on BellSouth's TELRIC study, a significant number of proposed rates are based on existing tariffs,.[14] while other proposed rates were established at embedded cost levels, displayed as TELRIC plus an actual historic cost adder.[15]

Existing tariffs were, of course, developed in the embedded cost world of monopoly regulation. As such, tariff rates are based on embedded cost methodologies, rather than forward-looking methodologies. In fact, those rates were likely set in a rate of return or other rate-based proceeding, which would be strictly prohibited under Section 252 of the Federal Act for interconnection and unbundled elements.[16] This is, of course, also inconsistent with the 1996

---

14 *E.g.*, Scheye, Tr. 91.

15 Scheye, Tr. 126-29.

16 For example, proposed rates for virtual collocation are the existing tariff rates, which BellSouth witness Scheye states have existed in federal tariffs for several years. Tr. 91. Obviously, tariffs developed several years ago would not be based on a forward-looking methodology.

Order which specifically rejected rates based on embedded cost.[17]

BellSouth's historic cost adjustment proposal is nothing more than an embedded cost study. BellSouth purports to have based its rates on TELRIC analysis when, in reality, BellSouth's proposed rates for unbundled loops are based entirely on historic embedded costs. This is one example of BellSouth saying the right thing, while doing the wrong thing.[18] For example, BellSouth has submitted a TELRIC study for unbundled loops, but bases its proposed loop and rates on the "revenue short-fall" between its TELRIC results and its "actual costs."[19] Therefore, BellSouth's pricing methodology is not a forward-looking methodology, rather it is an embedded cost methodology.

The rate in this instance is unrelated to the incremental cost result. As the adder is an amount needed to bring the TELRIC result to the embedded/historic/actual cost level, a lower TELRIC simply means a larger adder. This was graphically demonstrated in BellSouth's latest revised cost study, filed with its surrebuttal testimony on September 8, 1997, in which the proposed TELRIC rate for a 2-wire analog loop decreased by 70¢ only to be virtually wiped out by an offsetting increase of 67¢ in the historic cost adder.[20]

Embedded costs can never be appropriately considered in establishing forward-looking, efficient rates for unbundled elements. Using actual cost as a factor, whether as an add-on to direct costs or in developing the TELRIC-based cost is an improper method for setting prices because it does not yield the efficient or pro-competitive price signals. As noted, the use of actual

---

17 1996 Order, p. 14.

18 Wood, Tr. 1420.

19 Scheye, Tr. 126.

20 Zarakas/Caldwell, Tr. 452-54; BellSouth Exhibit No. 7.

costs is simply a means, proposed by some LECs, of guaranteeing a certain level of revenue. This approach should be rejected because it yields unbundled element prices which are not cost-based and, therefore, it does not foster competition.[21]

Incremental costs, be that a LRIC, TSLRIC or TELRIC, attempt to identify the (dollar) volume of society's economic resources that would be used in the provision of one product or service (or a group thereof) and, therefore, not available for use elsewhere. Entry, exit and pricing decisions in a competitive market are based on this type of forward-looking cost assessment. Total actual or embedded cost have nothing to do with the forward-looking incremental cost of a product or service. Embedded costs simply reflect the LECs' revenues under rate-of-return regulation, given the existing retail prices of services. Prices based on those "actual" costs should not be confused with a competitive result and cannot be relied upon to promote the competitive outcome.

IV.

BELLSOUTH'S SL1/SL2 LOOP PROPOSAL, AND ATTENDANT NON-RECURRING CHARGES, CONSTITUTES A BARRIER TO ENTRY FOR CLECS

BellSouth has presented to the Commission a proposal for two types of 2-wire analog unbundled loops, designated as Service Level 1 and Service Level 2 ("SL1" and "SL2"). SL1 represents a plain-old telephone service ("POTS") residential or single-line business service, while SL2 represents a designed loop including a Design Layout Record ("DLR").[22] Despite the fact that ACSI was the first purchaser of unbundled loops in Georgia, and is currently an active facilities-based competitive service provider purchasing unbundled loops purchased from

---

21 *See, e.g.*, First Report and Order, ¶708-710.

22 Scheye, Tr. 101-02.

BellSouth, BellSouth did not solicit input from ACSI regarding the SL1/SL2 unbundled loop offering.[23] BellSouth's two-tier loop proposal does not reflect the needs of CLECs in Georgia and imposes unnecessary and anticompetitive price penalties, both in the form of non-recurring charges to establish service and monthly recurring charges. The Commission should require BellSouth to provide unbundled loops with a single non-recurring charge that meets the needs of the CLECs to enter the competitive market and is in parity with non-recurring charges BellSouth that BellSouth imposes to initiate service to its own customers.

A. **BellSouth Loop Proposal Represents Less Functionality at a Significantly Higher Cost**

Prior to engaging in facilities-based competition in Columbus, Georgia, ACSI executed an interconnection agreement with BellSouth on July 25, 1996. That agreement was later amended by mutual agreement of ACSI and BellSouth regarding prices for unbundled loops. The ACSI/BellSouth interconnection agreement, as amended, was approved by the Commission on November 8, 1996 in Docket No.6881-U. The terms of the agreement regarding timing and duration of cutovers reflect ACSI's reasonable business judgment regarding what it determined to be necessary to attract and retain customers. ACSI's experience in Columbus and other markets has confirmed ACSI's evaluation of its customers' needs. Lengthy or delayed cutovers frequently have caused customers to terminate service with ACSI and return to BellSouth, as detailed in ACSI's complaint against BellSouth.[24]

As is more fully discussed below, the BellSouth SL1/SL2 proposal fails to meet the terms of the ACSI interconnection agreement with regard to cutover timing and duration. Further, The

---

[23] Varner, Tr. 217.

[24] Docket No. 7212-U, withdrawn without prejudice and refiled on July 9, 1997 as Docket No. 7818-U (the "ACSI Complaint").

BellSouth proposal includes significant surcharges in the form of exorbitant non-recurring charges, including the Specified Conversion Time surcharge, the Manual Order Coordination surcharge, the OSS Recovery surcharge, and the Number Portability surcharge. The Commission should not adopt these surcharges, each of which will significantly increase the cost of providing competitive local service in Georgia, and make Georgia an increasingly unattractive market for CLECs.

B. <u>The Basic Non-Recurring Charge</u>

The level of work required to cutover an unbundled loop is consistent with the level of work required to install a new BellSouth customer. The non-recurring charge for CLECs--***including cross-connect charges***[25]--should therefore be in the range of the end user non-recurring charge imposed by BellSouth. BellSouth's proposed electronic order charge to CLECs for an SL1 loop is $75.41.[26] BellSouth's proposed non-recurring charge to CLECs for a 2-wire cross-connect charge is $43.01. *Id.* Under BellSouth's tariff on file with the Commission, the non-recurring charge to business end use customers is $32.25 (as opposed to a total of $118.42 for an SL1 loop and cross connect). BellSouth tacitly conceded the relevance of this relationship by basing its non-recurring charges in ACSI's interconnection agreement at 80% of its end user

[25] Cross connects are an integral part of the unbundled loop process. The cross connect connects the BellSouth main distribution frame to the ACSI collocation space. In other words, it is the "jumper" run by BellSouth technicians during the cutover process. The BellSouth cross-connect charge will be imposed for every unbundled loop, but is found among the BellSouth virtual collocation charges.

[26] BellSouth Exhibit No. 2. BellSouth's proposed non-recurring charge for a manual order is $116.13, a premium of $40.72. The Commission should not allow BellSouth to impose a surcharge on manual orders until BellSouth fully implements its OSS interfaces, allows CLECs sufficient time to implement such interfaces, and such interfaces are proven to function seamlessly at a level that satisfies the FCC standards.

charge.[27] The non-recurring charges to BellSouth end-use customers should serve as a check on BellSouth cost studies to ensure that rates set by the Commission are in parity with services provided to CLECs.

C. The Cross-Connect Non-Recurring Charge

As stated above, BellSouth proposes a non-recurring charge for a 2-wire cross-connect of $43.01. This is an excessive charge for a simple connection from BellSouth's main distribution frame to ACSI's collocated space that is an integral part of unbundling a loop and that would have to be paid by each of ACSI's customers. Given that the cross-connect is an integral part of unbundling the loop, any additional work should be negligible. The cross-connect charge should likewise be negligible. In BellSouth's proposal. This charge by itself exceeds the charge for BellSouth to initiate business service. When coupled with BellSouth's basic non-recurring charge of $75.41, it is readily apparent that the minimum non-recurring charge for a CLEC to initiate service to a customer using a BellSouth unbundled loop is more than three time what BellSouth charges to initiate the same service. The imposition of higher charges on a CLECs customers will clearly hinder competition and make a CLEC's service unmarketable.

D. The Specified Conversion Time Surcharge

In order to perform a loop cutover at an appointed time, BellSouth proposes an additional non-recurring charge of $45.80.[28] The ACSI interconnection agreement requires the parties to negotiate 48 hours in advance for a thirty (30) minute cutover window for establishing service using an unbundled loop.[29] In the interconnection agreement, there is no surcharge for this basic

---

27 ACSI's interconnection agreement, Docket No. 6881-U.

28 BellSouth Exhibit No. 2.

29 Varner, Tr. 188; *see also,* ACSI's interconnection agreement, Section IV.D, Docket No. 6881-U.

customer courtesy of cutting over at an appointed time. While BellSouth Witness Varner denied that ACSI would have to pay this charge,[30] it is clear from BellSouth's testimony that, without this charge, provisioning would be performed during a much longer conversion window.[31] BellSouth's proposed three to four hour conversion windows would essentially hamstring a customer for half a day, with no certainty as to when the cutover would take place. ACSI negotiated the half hour time frame to avoid inconveniencing its customers. The BellSouth proposal represents significant backsliding for the Georgia consumer and should not be permitted.

E. Manual Order Coordination Surcharge

BellSouth's proposed "Manual Order Coordination Charge" reduces service disruption during loop cutover to fifteen minutes. Without payment of this charge, it is possible that a customer could be out of service for up to one hour while orders are being worked into the system.[32] BellSouth witness Scheye , in describing this surcharge, provides no technical justification for such a lengthy cutover interval.[33] The capabilities of automated digital switches should permit much shorter cutover intervals. BellSouth's proposed a manual order coordination surcharge is $62.83.[34]

---

30 Varner, Tr. 224-26.

31 While the exact windows are not specified in BellSouth's testimony, BellSouth did testify "for example, 10 a.m., 2 a.m. and 5 p.m. could be the three conversion windows." Varner, Tr. 187. The windows in BellSouth's example are 3-4 hours long, and clearly do not comply with the thirty-minute widow required by ACSI's interconnection agreement.

32 Varner, Tr. 187.

33 Scheye, Tr. 102.

34 BellSouth Exhibit No. 2.

The ACSI interconnection agreement provides that the "standard time expected from disconnection" is five (5) minutes for establishing service using an unbundled loop.[35] BellSouth has consistently denied the five-minute cutover time, stating that it is only obligated by the fifteen minute penalty provision of the ACSI interconnection agreement. *Id.* The fifteen minutes that BellSouth refers to is the time at which a penalty is imposed upon BellSouth in the form of waiver of the non-recurring charges. *Id.* By implementing its proposed "Manual Order Coordination Charge," BellSouth seeks to avoid honoring its commitment to ACSI to provide a five minute cutover interval. No provision has been made by BellSouth in these proceedings to meet the five minute cutover interval required by the ACSI interconnection agreement. Fifteen minutes is the shortest cutover interval proposed by BellSouth. While a service disruption of fifteen minutes may be regarded as minimally acceptable under ACSI's interconnection agreement, in that it would allow BellSouth to avoid penalties, BellSouth's proposed services in these proceedings will clearly deprive ACSI of the five minute cutover interval that it negotiated in good faith with BellSouth.

---

[35] Varner, Tr. 188; *see also,* ACSI's interconnection agreement, Section IV.D, Docket No. 6881-U.

F. The Commission Should Reject BellSouth's Proposed Anticompetitive Non-Recurring Charges

Summarized in the table below are the charges that BellSouth proposes to charge ACSI for an SL1 loop, electronically ordered, in compliance with the ACSI interconnection agreement:

	BellSouth Proposed Rates	ACSI Interconnection Agreement	BellSouth End-User Tariff
Basic Electronic Order Charge	$75.41	$25.80	$32.25
Cross-Connect Charge	43.01	12.60	
Order Coordination for a Specified Conversion Time (30 minute window)	45.80		
Manual Order Coordination (5 minute disruption on cutover)	62.83		
OSS Charge	10.77		
Interim Number Portability Charge	$ 2.27	______	______
Total	$240.09	$36.40	$32.25

By instituting optional premium charges for services that BellSouth is currently obligated to provide, BellSouth has undermined the competitive position of ACSI relative to the interconnection agreement voluntarily negotiated between ACSI and BellSouth. Further, BellSouth has also decreased the overall quality of service offered to ACSI by failing to provide for the five minute "standard expected time" service disruption contained in ACSI's interconnection agreement. The Commission should require that BellSouth retain its current commitments to ACSI, in the interest of protecting the quality of service delivered to Georgia consumers. Because BellSouth's proposed service offerings in these proceedings do not comport with the ACSI interconnection agreement, it will not be possible to use the pricing for these services under the true-up provisions of the agreement.[36]

The Commission should require BellSouth to provide loops with a non-recurring charge that meets the needs of the CLECs to enter the competitive market. The Commission should reject BellSouth's proposed "Manual Order Coordination for a Specified Conversion Time" and "Manual Order Coordination" non-recurring charges as barriers to competitive entry. BellSouth should, however, be required to provide this functionality within its single non-recurring charge for an SL1 loop. BellSouth may argue that its non-recurring charges are cost-based; however, BellSouth's consistent testimony is these proceedings has been that the Federal Act does not require any specific definition of cost-based rates, including BellSouth's.[37] Further, any BellSouth statement that these rates are cost based is illogical. This is demonstrated by BellSouth's proposed application of the two premiums in question. BellSouth has testified that these premiums will be assessed on a per-loop basis.[38] For example, for ACSI to obtain ten SL1 loops for a single customer, within the thirty-minutes specified in ACSI's interconnection agreement and the five-minute disruption, ACSI would pay over $1,000 for these non-recurring charges. BellSouth has not explained why multiple loops for the same customer provisioned at the same time would each incur the same cost for these services. Furthermore, under the Federal Act, unbundled elements must be provided on a non-discriminatory basis. Large premiums to establish services discriminate against CLEC services. The FCC has cautioned that non-

[36] ACSI's interconnection agreement provides for a true-up to rates developed in a generic cost docket. Such a true-up could not occur to either the SL1 or SL2 rates; however, because neither is the equivalent of the unbundled loop in ACSI's interconnection agreement. ACSI could only receive the SL1/SL2 rates if it so opted under the Most Favored Nations clause of its interconnection agreement.

[37] *E.g.*, Varner, Tr. 161.

[38] Varner, Tr. 229.

recurring charges will be closely examined in the Section 271 process to ensure that they do not constitute such a barrier to entry, given that "unreasonably high non-recurring charges could chill competition."[39]

G. **BellSouth's Proposal to Charge for SL2 Functionality is Anticompetitive**.

BellSouth has suggested no possible uses for the SL2 functionality, instead BellSouth testified that whether or not these features would be useful would be up to the CLECs.[40] Under BellSouth's proposed rates, the price premium for obtaining an SL2 loop is $108.97 in basic non-recurring charges for an electronic order and $3.32 per month in recurring charges.[41] This amounts to a total premium cost to the CLEC during the first year of almost $150 to obtain an SL2 loop. The only potential use for the SL2 functionality identified by any CLEC in these proceedings was that of ACSI witness William Stipe. Mr. Stipe testified that ACSI is currently using this functionality to diagnose the loop problems that are the subject of the ACSI Complaint against BellSouth.[42] BellSouth testified that some of the unbundled loop problems experienced by ACSI are to "human error" on the part of BellSouth.[43] It is unfair, discriminatory and anticompetitive to impose upon CLECs the cost of diagnosing BellSouth's problems in providing the competitive services necessary to open the local markets to competition that BellSouth is obligated to provide under state and federal law.

---

39 Ameritech Order, ¶ 395.

40 Scheye, Tr. 104-05.

41 BellSouth Exhibit No. 2. The premium reflects the difference between the proposed SL1 and SL2 rates.

42 Stipe, Tr. 2264-65.

43 Varner, Tr. 192-94.

Until such time as BellSouth demonstrates that it can provide unbundled loops seamlessly, without problems, CLECs should not be forced to bear the burden of paying for SL2 functionality including DLRs, the only practical purpose of which is to troubleshoot BellSouth's loop problems. BellSouth's performance in providing such loops must be demonstrated through objective reporting which is the subject of the performance standards to be promulgated in Docket No. 7892-U.

H. BellSouth's Proposed SL1/SL2 Offering is a Barrier to Entry to Local Competition

The Federal Act requires that unbundled elements be provided on a non-discriminatory basis. Section 251(c)(3). The pricing premiums in BellSouth's SL1/SL2, two-tier rate loop proposal and attendant non-recurring charges are discriminatory in that they impose a barrier to competitive entry by CLECs. ACSI's interconnection agreement provided a single non-recurring charge for provisioning an unbundled loop. The terms related to the provisioning of this unbundled loop regarding the timing and duration of cutovers, were thoughtfully and prudently determined by ACSI to minimize the disruption to the CLEC's customer's business, thereby making conversion to CLEC service no less attractive than maintaining service from BellSouth. Non-recurring charges of $240, and the cost premiums to obtain SL2 functionality would impose a significant financial burden on CLECs seeking to serve new customers. Excessive non-recurring charges are particularly onerous if new entrant CLECs experience churn in customers. For example, if a customer stays with a CLEC for only one year, the SL1 non-recurring charges of $240 would amount to $20 per month. This exceeds the currently effective interim loop rate of $14.22 established in the 1996 Order.

In addition, BellSouth has obligations as a company that has elected alternative regulation.[44] Pursuant to O.C.G.A. § 46-5-169(4), a company that has elected alternative regulation "[s]hall not . . . engage in any anticompetitive act or practice including but not limited to price squeezing, price discrimination . . . ." Excessive recurring and non-recurring charges are a form of price discrimination against CLECs that is anticompetitive, in violation of Georgia law.

I. The Commission Should Reject BellSouth's Proposed OSS Recovery Surcharge and Number Portability Surcharge

The Commission should also reject BellSouth's proposed Operator Support Services ("OSS") non-recurring charge. The FCC requires BellSouth to provide OSS as part of its obligation to open its local markets to competition.[45] Further, this Commission has recognized that BellSouth must provide OSS in order to meet its obligations under Section 271 of the Federal Act.[46] This requirement is one of many that BellSouth must fulfill prior to being granted interLATA entry. If a CLEC requests the development of a specific interface, it is understandable if that particular CLEC is required to bear the cost of development. However, if a CLEC simply uses the generic interfaces developed by BellSouth, such as the LENS system, the CLEC should not be required to pay for the cost of development of that interface. The cost of developing OSS is BellSouth's cost of doing business. BellSouth's revenues derived from long distance will easily cover the cost of developing OSS interfaces. BellSouth proposes a charge of $10.77 be imposed on every electronic order.[47] Imposing this charge on CLECs, when BellSouth places electronic

---

[44] BellSouth applied to the Commission for alternative regulation on July 5, 1995. Docket No. 5946-U.

[45] The FCC concluded "that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself." First Report and Order, ¶ 523.

[46] Order Regarding Statement, Docket No. 7253-U, March 21, 1997.

[47] BellSouth Exhibit No. 2.

orders for its own customers at no similar charge, would place CLECs at a competitive disadvantage.

CLECs as well as BellSouth will incur costs to implement OSS systems. While not required to provide OSS systems, CLECs will incur expenses for implementing and connecting to BellSouth's OSS. ACSI will spend hundreds of thousands of dollars to implement OSS. Requiring CLECs to pay for their own OSS costs and those of BellSouth discriminates against CLECs, in violation of Section 251(c)(3) of the Federal Act.

BellSouth also proposes a non-recurring charge of $2.27 to recover expenses associated with number portability. BellSouth proposes that this be charged to CLECs while its own customers will not be similarly charged. Again, this creates an unfair competitive advantage for BellSouth. Additionally, the current number portability solution is temporary. The costs associated with number portability should be borne by all parties when a permanent solution is adopted. The FCC has concluded that each carrier should pay for its own costs of available number portability measures; and importantly, the FCC has prohibited recovery of temporary number portability being made from new entrants only.[48] Likewise, this Commission should reject BellSouth's proposal to recover all costs of temporary number portability from new entrants.

Clearly, BellSouth's filing assumes as a matter of policy that OSS and number portability expenses incurred by BellSouth must be defrayed by BellSouth's new entrant competitors. This is a misdirected policy assumption that places the expense of creating a competitive market on a few small new entrant competitors. We are in the midst of a paradigm shift from monopoly local exchange markets to competitive ones. As part of that shift, the U.S. Congress in the Telecommunications Act of 1996 required BellSouth and other RBOCs to unbundle OSS and

---

[48] FCC First Report and Order on Number Portability, 96-833, July 2, 1996.

provide number portability. These are just two aspects of the movement towards competition, a process that will accrue to the benefit of ***every single consumer*** in Georgia. As ACSI enters the market, it is not just ACSI customers that benefit, but BellSouth customers too will receive the benefit of lower prices (through special contracts, in part), and increased responsiveness. Accordingly, the costs of this movement should not be foisted upon the small start-up companies such as ACSI, and the pioneering customers that they serve, to pay for interfaces and functions that will benefit all consumers. These costs must be spread evenly across all customers. There is no evidence in this record to justify BellSouth's OSS or number portability surcharges as the means to such an even distribution.

The Florida Public Service Commission addressed the issue of OSS cost recovery in detail in its AT&T/MCI/ACSI arbitration order (the "Florida Order"),[49] a copy of the relevant portions of which is attached hereto market Exhibit "A." The Florida Order also discuss the mechanisms permitted by the FCC for the even distribution of interim number portability costs. The Florida Commission concludes that each party should bear its own cost for OSS and interim number portability. ACSI recommends that this Commission adopt a similar rationale and require all parties to pay their own costs of implementing OSS and interim number portability. This is also consistent with the move towards a competitive environment, as opposed to a rate regulated environment intended to keep BellSouth whole. If the Commission feels compelled to revisit this issue at a later date, it should do so in a separate proceeding.

---

[49] Order No. PSC-96-1579-FOF-TP in Docket Nos. 960833-TP, 960846-TP and 960916-TP, December 31, 1996, pp. 86-87 and 97-99.